



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

JUN 7 2005

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Donald A. Rindal, Registered Agent for  
Rindal Oil, Inc.  
P.O. Box 504  
Lewistown, MT 59457

Re: In the Matter of: Rindal Oil, Inc.  
Administrative Complaint and Notice of  
Opportunity for Hearing  
Docket No. CWA-08-2005-0021

Dear Mr. Rindal:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Rindal Oil, Inc., pursuant to its authority under section 311(b)(6)(B)(i) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(i). EPA alleges in the Complaint that Rindal Oil, Inc.'s facility located at 717 Joyland Road, Lewistown, Montana, is in violation of the oil pollution prevention requirements set forth at 40 C.F.R. Part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

Specifically, the Complaint alleges that Rindal Oil, Inc., failed to prepare and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan for its facility in writing and in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. EPA discovered the violations during an unannounced SPCC inspection of the facility on September 9, 2004. The Complaint proposes a total penalty of \$32,500.00 for the alleged violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an

answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

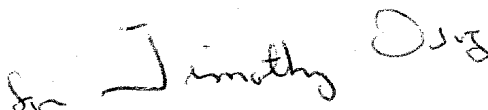
If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgment may be entered pursuant to 40 C.F.R. § 22.17. This judgment may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing. Public Notice of and reasonable opportunity to comment on the proposed issuance of an order assessing a class II civil penalty is being provided pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C). If no hearing is held under section 311(b)(6)(B) of the Act, 33 U.S.C. § 1321(b)(6)(B), any person who comments on the proposed penalty assessment may participate in a hearing on the penalty if requested pursuant to section 311(b)(6)(C)(iii) of the Act, 33 U.S.C. § 1321(b)(6)(C)(iii).

If you have any questions, the most knowledgeable people on my staff regarding this matter are Wendy Silver and Donna Inman. Ms. Silver is in our Legal Enforcement Program and can be reached at (303) 312-6637. Ms. Inman is in our Technical Enforcement Program and can be reached at (303) 312-6201.

We urge your prompt attention to this matter.

Sincerely,



Elisabeth Evans, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
SBREFA Information Sheet  
Notice of SEC Disclosure  
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water  
Act, dated August, 1998.  
EPA Supplemental Environmental Projects Policy, dated May 1, 1998

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2005 JUN -7 AM 9:36

IN THE MATTER OF:

Rindal Oil, Inc.

P.O. Box 504

Lewistown, Montana 59457

Respondent.

) Docket No. CWA-08-2005-0021

) **ADMINISTRATIVE COMPLAINT AND  
OPPORTUNITY TO REQUEST HEARING**

) Proceeding to Assess Class I Civil Penalty  
) Under Section 311 of the Clean Water Act

FILED  
EPA REGION VIII  
HEARING CLERK

**AUTHORITY**

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(i) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

2. Respondent is a corporation organized under the laws of Montana, and a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

3. The Respondent owns and operates a bulk fuel storage facility located at 717 Joyland Road, Lewistown, Montana ("facility"). The facility includes, but is not limited to, four 12,000 gallon gasoline or diesel tanks, two 6,000 gallon dyed diesel #2 tanks, one 2,000 gallon

diesel tank, two 1,000 gallon dyed diesel tanks, one 1,000 gallon gasoline tank, fifteen to twenty 55 gallon lube oil drums, and one portable 500 gallon diesel tank, with a total oil storage capacity of approximately 65,000 gallons.

4. Gasoline, dyed diesel, diesel, and lube oil are oils within the meaning of "oil" as defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

5. Respondent stores, transfers, distributes, uses or consumes oil or oil products at the facility.

6. Respondent is now, and was at the time of the inspection, an "owner and operator" of an "onshore facility" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).

7. The facility is a "non-transportation related" onshore facility within the meaning of 40 C.F.R. § 112.2.

8. The facility is located approximately 1,500 feet west of Big Spring Creek, which is tributary to the Judith River, a tributary of the Missouri River.

9. Big Spring Creek, the Judith River and the Missouri River are "navigable waters" and "waters of the United States" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

10. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges ...."

11. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R.

Part 112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines ....”

12. The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

13. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. Part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

14. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in writing, and in accordance with applicable sections of Part 112, including, but not limited to, sections 112.7 and 112.8.

15. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this

section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

16. On or about September 9, 2004, EPA conducted an unannounced SPCC inspection ("the Inspection") of the facility.

17. At the time of the Inspection, the facility had a total fuel storage capacity of approximately 65,000 gallons.

18. The facility did not have a written SPCC plan at the time of the Inspection.

19. The following SPCC implementation measures were found to be deficient at the facility at the time of the Inspection:

- a. Failure to provide secondary containment and/or diversionary structures or equipment for tank trucks unloading into the double-wall fuel storage tanks (40 C.F.R. § 112.7(c));
- b. Failure to conduct inspections in accordance with written procedures and to maintain the written inspection records for three years (40 C.F.R. § 112.7(e));
- c. Failure to designate a person who is accountable for spill prevention (40 C.F.R. § 112.7(f));
- d. Failure to provide adequate fencing, lighting, or other security measures for the facility (40 C.F.R. § 112.7(g));
- e. Failure to provide a warning or barrier system to prevent premature vehicular departure prior to disconnection of transfer hoses (40 C.F.R. § 112.7(h)(2));
- f. Failure to provide secondary containment for truck loading and unloading rack for the large tanks (40 C.F.R. § 112.7(h)(1));
- g. Failure to provide facility drainage from undiked area around the loading/unloading rack and the tank truck parking area to a pond, lagoon, or equivalent catchment basin (40 C.F.R. § 112.8(b)(3)).
- h. Failure to provide adequate secondary containment for four 12,000-gallon and two 6,000-gallon storage tanks due to cracks in the concrete secondary

containment wall and no secondary containment for the 55-gallon drums inside of warehouse, sixteen 55-gallon drums of used oil in field behind warehouse(40 C.F.R. § 112.8(c)(2));

- i. No procedures for visually inspecting containers and supports for signs of deterioration, discharges or accumulation of oil (40 C.F.R. § 112.8(c)(6));
- j. Failure to promptly correct visible discharges and remove accumulations of oil (40 C.F.R. § 112.8(c)(10));
- k. Failure to provide secondary containment for 500-gallon portable diesel storage tank and delivery trucks (40 C.F.R. § 112.8(c)(11)); and
- l. Failure to regularly inspect aboveground valves, piping, and appurtenances (40 C.F.R. § 112.8(d)(4)).

20. Respondent failed to prepare and implement a SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. §112.3.

21. Respondent's failure to prepare and implement a SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 from September 9, 2004, through and including the date of issuance of this complaint (a duration of approximately 270 days) constitutes violations of 40 C.F.R. §112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C) of the Act.

#### **PROPOSED PENALTY**

22. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, authorizes the assessment of a civil penalty of up to \$11,000 for each violation, except that the maximum amount of any class I civil penalty shall not exceed \$32,500 for all violations.

23. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §§ 1321(b)(6)(B)(i), Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$32,500. Complainant



proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require.

24. Specifically, the proposed penalty amount is based on major non-compliance as the violations undermine the ability of the Respondent to prevent discharges of oil from impacting waters of the United States. There is no facility SPCC plan and twelve SPCC implementation measures were deficient on the date of the inspection. The potential environmental impact from a discharge would be moderate because any drainage from the facility would have a significant impact on Big Spring Creek, located approximately 1,500 east of the facility. Culpability was deemed to be significant given that the SPCC regulation has been in existence since 1974, two workshops were conducted in Montana in August, 2003, and Respondent was given thirty days to come into compliance and failed to do so. Additionally, the penalty was increased by one-half of one percent for each month the Respondent has failed to come into compliance. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

#### **TERMS OF PAYMENT FOR QUICK RESOLUTION**

25. If Respondent does not contest the findings and penalty proposed above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If

such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund," with the docket number and name of the facility written on the check, to:

Donna Inman  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

### **OPPORTUNITY TO REQUEST A HEARING**

26. As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired.

Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Wendy I. Silver, Enforcement Attorney  
U.S. EPA Region 8 (8ENF-L)  
999 18th Street, Suite 300  
Denver, CO 80202-2466  
Telephone: (303) 312-6637

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

### **SETTLEMENT CONFERENCE**

27. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Wendy Silver at 303-312-6637. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an

Answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Office of Enforcement, Compliance and  
Environmental Justice, **Complainant.**

Date: 5/25/05

By:

for

Elisabeth Evans, Director  
Technical Enforcement Program

Date:

6/1/05

By:

Michael T. Risner, Director

Legal Enforcement Program

David J. Janik, Supervisory Enforcement Attorney

Legal Enforcement Program

Continued)

In The Matter Of: Rindal Oil, Inc.

Docket No.: CWA-08-2005-0021

Date: 6/3/05

Wendy I. Silver  
Wendy I. Silver, Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466

Telephone: 303-312-6637

Facsimile: 303-312-6953

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Donald A. Rindal, Registered Agent for  
Rindal Oil, Inc.  
P.O. Box 504  
Lewistown, MT 59457

6/7/05  
Date

Judith McTernan  
Judith McTernan

1st Page only

**CIVIL PENALTY POLICY  
FOR SECTION 311(b)(3) AND SECTION 311(j)  
OF THE CLEAN WATER ACT**

**Office of Enforcement and Compliance Assurance  
August 1998**

# EPA SUPPLEMENTAL ENVIRONMENTAL PROJECTS POLICY

Effective May 1, 1998

1st Page only

## A. INTRODUCTION

### 1. Background

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) requires the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be part of the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, regulated entities would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. Penalties also encourage regulated entities to adopt pollution prevention and recycling techniques in order to minimize their pollutant discharges and reduce their potential liabilities.

Statutes administered by EPA generally contain penalty assessment criteria that a court or administrative law judge must consider in determining an appropriate penalty at trial or a hearing. In the settlement context, EPA generally follows these criteria in exercising its discretion to establish an appropriate settlement penalty. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor for EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP compared to the violator who does not agree to perform a SEP.

The Agency encourages the use of SEPs that are consistent with this Policy. SEPs may not be appropriate in settlement of all cases, but they are an important part of EPA's enforcement



## **NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

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Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

#### F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

#### G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,  
Administrator.

1st Page Only

Therefore, 40 CFR part 22 is revised to read as follows:

### PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

#### Subpart A—General

##### Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

#### Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

#### Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

#### Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

#### Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

#### Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.



## U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

**The National Environmental Compliance Assistance Clearinghouse** provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

**Pollution Prevention Clearinghouse**  
<http://www.epa.gov/opptintr/library/ppicindex.htm>

**EPA's Small Business Ombudsman Hotline** can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:  
(800) 368-5888

**Emergency Planning and Community Right-To-Know Act**  
(800) 424-9346

**National Response Center** (to report oil and hazardous substance spills)  
(800) 424-8802

**Toxics Substances and Asbestos Information**  
(202) 554-1404

**Safe Drinking Water**  
(800) 426-4791

**Stratospheric Ozone and Refrigerants Information**  
(800) 296-1996

**Clean Air Technology Center**  
(919) 541-0800

**Wetlands Helpline**  
(800) 832-7828

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

**EPA's Home Page**  
<http://www.epa.gov>

**Small Business Assistance Program**  
<http://www.epa.gov/ttn/sbap>

**Office of Enforcement and Compliance Assurance**  
<http://www.epa.gov/compliance>

**Compliance Assistance Home Page**  
<http://www.epa.gov/compliance/assistance>

**Office of Regulatory Enforcement**  
<http://www.epa.gov/compliance/civil/index.html>

**Office of Site Remediation Enforcement**  
<http://www.epa.gov/compliance/cleanup>

**Innovative Programs for Environmental Performance**  
<http://www.epa.gov/partners>

**Small Business Ombudsman**  
[www.sba.gov/ombudsman](http://www.sba.gov/ombudsman)